IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.11945 of 1998

Between:

M/s Visakhapatnam Dock Labour Board and Dock

Workers Union (Regd.No. D/744),

rep. by its General Secretary,
S. Parasuram S/o late Achanna,
52 years, R/o Visakhapatnam.

..... PETITIONER

AND

1 Government of India, rep.by Secretary,
Ministry of Surface Transport, New Delhi.
2 Visakhapatnam Dock Labour Board, rep. by its Chairman,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the first respondent in purporting to direct the second respondent not to include piece rate earnings and incentive amounts for the purpose of computation of pensionary benefits of the dock workers, is arbitrary and illegal and direct the respondents to compute the pensionary benefits of the Dock workers duly taking into account the piece rate earnings and incentive amounts within the meaning of emoluments and allow all such benefits to those who have retired with effect from 1-7-1995 also and grant such other relief as it deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. V.VENKATARAMANA

Counsel for the Respondent No.1: Mr. T.RAMAKRISHNA RAO

Counsel for the Respondent No.2: Mr. K. SRINIVASA MURTHY

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the action of the 1st respondent in directing the 2nd respondent not to include the piece rate earnings and incentive amounts for the purpose of computation of pensionary benefits of dock workers as arbitrary and illegal and consequently to direct the respondents to compute the pensionary benefits of the dock workers duly taking into account the piece rate earnings and incentive amounts within the meaning of 'emoluments' and allow all such benefits.

The case of the petitioner – Visakhapatnam Dock Labour Board and Dock Workers Union – is that it is a registered Trade Union representing the cause of workers in Visakhapatnam Dock Labour Board, which is constituted under Section 5 of the Dock Workers (Regulation of Employment) Act,1948. It is interested in protecting the service conditions of its members and it is one of the recognized trade unions operating in the 2nd respondent industrial establishment. The dock workers are paid piece rate earnings/incentives over and above the ordinary wages, for extra work done beyond the regular hours. In other words, for attending to extra work, the 2nd respondent allows piece rate earnings linked to the quantum of work turned out and also incentives. The 2nd respondent framed Rules known as 'Visakhapatnam Dock Labour Board Employees Pension Rules' (for short 'the Rules') in exercise of its powers under the said Act, which came into force with effect from 1-4-1979. These Rules defined the word 'pay' as the amount drawn monthly by an employee and 'emoluments' as pay defined in Rule 3(iii) plus piece rate earnings, incentive payments and other payments, which attract liability to contribute for provident fund. Thus, the definition of the words 'pay' and 'emoluments' clearly indicates that the piece rate earnings and incentive payments, which attract liability to contribute

provident fund shall stand included in the definition of the said words. The 2nd respondent while understanding the same rightly for the purpose of computation of pension has been allowing pension on pay and emoluments, which included the piece rate earnings and incentive payments. The 2nd respondent has been collecting Provident Fund contributions on the piece rate earnings/incentive amounts in addition to the income tax deducted at source. Therefore, the amount paid towards piece rate incentives shall necessarily be included for the purpose of computation of pension. While so, the 1st respondent issued a clarification on 24-5-1994 to the effect that as per the definition of 'basic pay' in Fundamental Rule 9(21), the question of inclusion of piece rate/incentive amounts with basic pay does not arise and directed the 2nd respondent to ensure that piece rate/incentive payments are not included with the basic pay for the purpose of calculation of pension in respect of those who had retired or will retire on or after 1-1-1998. On the clarification issued by the 1st respondent on 24-5-1994, the 2nd respondent addressed a letter dated 23-6-1994 to the 1st respondent to the effect that the clarification, if implemented, would cause industrial unrest and suggested to the 1st respondent that as per the definition of 'emoluments' under the Pension Rules, piece rate/incentive amounts are liable to be included for the purpose of computation of pension and hence, requested the 1st respondent to reconsider the substance of the order dated 24-5-1994. Thereafter, the 1st respondent issued an order dated 30-6-1995 to the effect that pension has to be calculated excluding the piece rate/incentives and as per F.R.9(21) of the Fundamental Rules. Therefore, it has taken up the cause of wrong computation of pension and a strike notice was issued on 4-3-1996 and Demand No.5 under the said notice speaks that the piece rate earnings are to be counted for the purpose of pension, gratuity etc., as was done previously. However, the 2nd respondent-Management accepted to examine the issue in a very non-committal manner and the demands raised in the said strike notice has led to a Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act,1947 dated 30-9-1997. But in the said settlement, the above Demand No.5 relating to inclusion of piece rate earnings/incentives for the purpose of pension was withdrawn by the union on the assurance given by the 2nd respondent to examine the same. But, the 2nd respondent has not considered the said issue in spite of several representations from the Union. Hence, this Writ Petition.

Separate counter affidavits have been filed by respondents 1 and 2 denying the allegations made by the petitioner. It is asserted by the 1st respondent that as per the Ministry of Surface Transport Order No.A-38011/33/89-P.E.1, dated 24-5-1994 read with letter No.A-38011/23/94-P.E.1, dated 30-6-1995 in case of persons, who retired on or after 1-1-1988 as per the Central Government definition of 'pay', the basic pay as defined under F.R. 9(21)(a)(i) and Special Dearness Allowance shall be taken into account for the purpose of reckoning average emoluments for pension. The piece rate earnings/incentive payments are not included in the basic pay for the purpose of calculation of pension. However, pensioners, who had received benefit of piece rate/incentive in computation of their pension were allowed to exercise their option to continue with their existing rate of pension and dearness relief viz., 5% of pension subject to a minimum of Rs.5/- and maximum of Rs.25/- for every 20 points shift in All India Consumer Price Index (AICPI) or to come over to the Central Government definition of pay as defined under F.R.9(21)(a)(i) from 1-1-1986. Since the piece rate/incentive payments are not termed as wage or pay in terms of the Fundamental Rules, they do not qualify for the calculation for the purpose of pension. It is admitted that the Visakhapatnam Dock Board had addressed a letter dated 23-6-1994 to the 1st respondent seeking orders to include incentive with the basic pay for the purpose of calculation of pension in respect of workers. This letter was also considered by the Ministry of Surface Transport before issuance of letter dated 30-6-1995. An option was given to the workers, who had received the incentive payments and got them reckoned as wages for the calculation of Provident Fund etc., either to elect the Central Government definition of pay and consequent benefits or to remain in the earlier scheme of dearness relief based on AICPI. The 2nd respondent in its counter asserted that there is no deviation whatsoever and now what the petitioner has been seeking is as to the modification of the said scheme. The allegation that as per Settlement dated 1-1-1993 the employees were entitled for pensionary benefits on piece rate earnings and the Government's directives were given to all the port employees is not correct. In fact, the same was being computed as per the instructions issued by the Ministry of Surface Transport, Government of India and as per the settlement entered into between the parties.

Learned counsel for the petitioner strenuously contended that under the Visakhapatnam Dock Labour Board Employees Pension Rules, the term 'emoluments' is defined, which included the piece rate payments and also incentive.

The Rules are statutory in nature and the instructions, if any, issued, even by the Ministry of Surface Transport, Government of India, cannot amend or take away the benefits conferred nor rescind, cancel or alter the said Rules unless and until they are legally do so. Therefore, the computation of pension by including the piece rate earnings/incentives must be calculated as per the Rules, which are not repealed.

Learned counsel for the respondents strenuously contended that the very Writ Petition is not maintainable, since the petitioner-union does not disclose as to how many members it has got and what is the resolution passed in this regard permitting the Union to file the Writ Petition. Further, they have stated that there are no statutory Rules as such and even the Rules purported to have been made, which are titled as 'Visakhapatnam Dock Labour Board Employees Pension Rules, are not statutory in nature. Assuming that they are statutory in nature, they have no relevance for the purpose of issues involved in this case, for the reason that there was a bipartite agreement at all India level and the petitioner-union is affiliated to one all India union called Hind Mazdoor Sangh. The said Union participated in the negotiations on 6-12-1994 and entered into a bipartite agreement. Clause (23) of the said agreement contemplates referring of the matter to a sub-committee and in fact, the sub-committee constituted in this regard had submitted its report, which is binding on all the parties. Therefore, the question of applicability of Visakhapatnam Dock Labour Board Employees Pension Rules to the members of the petitioner-union does not arise. The members of the petitioner-union are governed by bipartite agreement, which has binding force on all the parties.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

At the outset, I am of the opinion that the grievance of the petitioner-union is imaginary and speculative. The Visakhapatnam Dock Labour Board Employees Pension Rules have come into force with effect from 1-4-1979. It is also not necessary to go into the aspect whether the Rules are statutory in nature and whether they are governing the field as on today, for the reason it is a fact that there was a bipartite agreement at national level governing the service conditions of all the Dock Labour Board employees throughout the country. It is not in dispute that the

petitioner-union is affiliated to Hind Mazdoor Sangh, which participated in the negotiations and signed the bipartite agreement dated 6-12-1994. It is also not in dispute that clause (23) of the bipartite agreement contemplates referring certain matters to the sub-committee. In fact, the matter was referred to the sub-committee and the sub-committee submitted its report. The same has been communicated to the Chairmen of all the Major Port Trusts and Dock Labour Boards in India, which is dated 30-6-1995. It states that the recommendations made by the sub-committee on pension constituted by the Bipartite Wage Negotiation committee have been considered and the Government approval thereto is conveyed. The relevant portion of the said communication dated 30-6-1995 reads as under:

> "(1) DEARNESS RELIEF FOR PENSIONERS & FAMILY PENSIONERS
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> -
>
> Dearness Relief on basic pension and family pension may be granted w.e.f. 1.1.1986 beyond AICPI 607 points (1960=100) to the Port Trust and Dock Labour Board Pensioners as under:
>
> a) Upto Rs.750/- : 5% of pension subject to a minimum
>
> of Rs.5/- and maximum of Rs.25/- for
>
> every 20 points shift in AICPI.
>
> b) Above Rs.750/- and : 100% neutralization
>
> upto Rs.1750/-
>
> c) Above Rs.1750/- and : 75% "
>
> upto Rs.3000/-
>
> d) Above Rs.3000/- : 65% "
>
> Note: i) The neutralization indicated at (b), (c) and (d) is subject to marginal adjustment.
>
> ii) In the event of any pensioner drawing pension/family pension above Rs.750/- p.m. gets DA Relief more than 100% neutralization marginally,

the same will be protected.

iii) Dearness Relief will be sanctioned from 1st July and 1st January every year based on the annual average increase in price rise beyond CPI of 607 points, as on the preceding 30th June or 31st December, as the case may be, for those at (b), (c) & (d) above.

(3) Piece rate incentive for the purpose of computing pensionery benefits

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Pensioners who have received the benefit of piece rate incentive in computation of their pension may be given option either to continue with the existing rate of pension and dearness relief viz., 5% of pension subject to a minimum of Rs.5/- and maximum of Rs.25/- for every 20 points shift in AICPI or to come over to the Central Govt. definition of pay as defined under F.R.9(21)(a)(i) from 1-1-1986 with the dearness relief as proposed in item (1)of para 1 above. For future retirees, Central Govt. definition of pay as defined under F.R.9(21)(a)(i) will be strictly followed."

From the above, it is clear that those who already received the benefit of piece rate incentive in computation of their pension may be given option either to continue with the existing rate of pension and dearness relief i.e. 5% pension, subject to a minimum of Rs.5/- and maximum of Rs.25/- for every 20 points shift in AICPI or to come over to the Central Government definition of 'pay' as defined under F.R.9(21)(a)(i) from 1-1-1986 with the dearness relief as proposed in item (1) of Para 1 above. Here, it may be necessary to note that when the said option offered to the persons, who have already retired from service and whose pension was computed on the basis of piece rate earnings/incentives, as many as 781 persons (all the retired persons) gave their option to come over to the new pension with some modification. The bipartite agreement entered into between the Trade unions at national level and the Government of India is not in dispute. Once this is so, the bipartite agreement is binding on all the parties, as the petitioner also participated through its parent organization – Hind Mazdoor Sangh. Further, once there is a binding bipartite agreement between the parties, whether there were any Rules governing the field, like the Visakhapatnam Dock Labour Board Employees Pension Rules or any other statutory rules, has no relevance unless and until it is shown that the bipartite agreement entered into at National level is either unconstitutional or immoral. A

bipartite agreement, for that reason, any settlement between the parties as to service conditions can be contrary to the service conditions, if any, in existence.

This is a case where the Rules have been framed having regard to the directions/instructions issued by the Government of India pursuant to the recommendations of a sub-committee constituted as per clause (23) of the bipartite agreement dated 6-12-1994. Further, the settlement said to have been arrived at between the parties under Section 12(3) of the Industrial Disputes Act,1947 also does not deal with the issue. On the other hand, this issue was dropped. Therefore, it cannot be said that in view of the statutory rules i.e. the Visakhapatnam Dock Labour Board Employees Pension Rules, the communication received by the respondent-Board dated 30-6-1995 from the under Secretary to the Government of India, Ministry of Surface Transport (Ports Wing), New Delhi cannot be said to be either contrary to the said Pension Rules or the same is not binding on the parties. In view of the bipartite agreement entered into between the parties on 6-12-1994, which is not in dispute, and the recommendations of the sub-committee on pension constituted by the Bipartite Wage Negotiation Committee, the method of computation adopted by the respondents as to computation of pension as contemplated in the communication dated 30-6-1995 cannot be said to be either arbitrary or illegal.

For all the above reasons, the Writ Petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

-06-2005

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Government of India, rep.by Secretary,
Ministry of Surface Transport, New Delhi.
2 Visakhapatnam Dock Labour Board, rep. by its Chairman,
Visakhapatnam.

3 CD copies